

Claimant filed his original request for post-award medical benefits on March 8, 2006. The ALJ appointed Dr. Terrence Pratt to examine and treat the claimant for his work-related injuries. That treatment continued until June 8, 2007, at which time Dr. Pratt indicated that claimant's then-current work activities (at another employer) were causing claimant's symptoms to increase. He made some treatment suggestions which respondent refused to provide given its position the claimant suffered a "new" accident. This refusal led claimant to file a second request for post-award medical benefits.

During the post-award proceedings, Dr. Pratt testified as to his treatment and evaluation of claimant's condition. According to Dr. Pratt, following his initial evaluation of claimant's cervical spine, left shoulder and upper extremity complaints, he recommended an EMG, medications and physical therapy. Claimant was encouraged to continue using his TENS unit and undergo trigger point injections if needed. During this period of treatment, commencing in March 2006, claimant was working as a security officer. Claimant's complaints during this time included "*occasional* aching, throbbing, nagging, numb, tiring" pain.¹

At the last office visit with Dr. Pratt on June 8, 2007, claimant's complaints were "*continuous*" rather than the previously described "*occasional*". The two of them discussed claimant's complaints and the type of activities in which he was engaging. At this point, Dr. Pratt learned that claimant had returned to "hard work building large trucks."² Apparently claimant had changed jobs in the hopes of earning more money and he noticed an increase in his symptoms. But the symptoms he complained of were not new but "the intensity had increased in his symptoms."³ Dr. Pratt concluded that claimant's work activities were "aggravating the underlying involvement."⁴ He went on to testify that claimant's condition was made worse by his working at this new job.⁵

Although he offered some further treatment options for claimant, respondent was not willing to approve those recommendations as it believed claimant's appropriate course of action was to pursue a claim against his present employer. Claimant adamantly disagrees arguing that his pain is the same as when he worked for respondent and that even Dr. Pratt recognizes that there is an "ebb and flow" to such complaints.⁶ Moreover, claimant states that he has not testified to any such subsequent injury, nor did respondent offer any evidence of any subsequent, intervening accident.

In claimant's request for post-award medical treatment, he has the burden to prove his right to an award of compensation and prove the various conditions on which his right depends.⁷ In a post-award medical proceeding, an award for additional medical treatment can be made if the trier of fact finds that the need for medical care is necessary to relieve

¹ Pratt Depo. at 11. (Emphasis added)

² *Id.* at 13.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 14.

⁶ *Id.* at 20-21.

⁷ K.S.A. 44-501(a).

and cure the natural and probable consequences of the original accidental injury which was the subject of the underlying award.⁸

As noted, the claimant has the burden of proof to establish that his need for post-award medical treatment is causally related to the injury suffered in the underlying accident. But respondent has the burden to prove claimant has suffered intervening accidents. The passage of time and intervening accidents may increase the claimant's difficulty in establishing the causal connection. And there are no prohibitions against respondent attempting to prove the current need for medical treatment is related to intervening injuries and not to the previous compensable work-related injury.

After hearing this evidence, the ALJ issued an Order which was interlocutory and did not resolve the parties' dispute. Instead, he concluded that two separate independent medical examiners (IME) should conduct physical examinations to determine "if claimant is in need of additional medical care as related to his occupational injury in so far as his spine is concerned."⁹ He made the same directive with respect to claimant's left upper extremity, appointing Dr. Baker as the independent medical examiner to determine "whether or not claimant's current complaints are related to that occupational injury, and [whether] claimant needs treatment."¹⁰ In order to preserve the status quo, the ALJ authorized Dr. Pratt to continue as claimant's treating physician "until further Order of the Court."¹¹ Dr. Pratt had been previously ordered to provide treatment and that order remained in force and effect. As such, the ALJ was not modifying his prior Order even though respondent had unilaterally discontinued paying for claimant's treatment.

Respondent has appealed this Order contending that the ALJ erred in awarding claimant continued medical treatment or any further examinations or evaluations as it maintains its liability has now been terminated as a result of the subsequent accident at claimant's present employer.

The flaw in respondent's argument is the fact that the ALJ has yet to decide the ultimate issue presented by the parties, namely whether claimant has suffered an intervening injury and if claimant requires further treatment for the underlying accident. Those are the very issues that the two IME physicians have been directed to address following their examinations.

⁸ K.S.A. 44-510k(a).

⁹ ALJ Order (Jan. 10, 2008) at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

The Board has long held that an ALJ's decision to appoint an IME to conduct an examination is not a final order.¹² Normally, an ALJ appoints an IME during the course of litigating the original claim. Similarly, it is not uncommon for that same procedure to be employed in the post-award context to determine, as here, whether the sought after treatment is reasonably necessary to address the original injury.

The Board finds no reason to find jurisdiction over this decision at this juncture of the post-award proceedings before such time that the IME physicians have had an opportunity to speak to the ultimate issues. While it is true that Dr. Pratt has suggested that claimant may well have sustained a new accident in the form of an aggravation of his underlying injury, the IME examinations ordered by the ALJ will aid him in determining whether claimant is in need of further treatment for his compensable injury or whether his present complaints are solely the result of his new job. Only at that point will the ALJ's decision be ripe for review.

WHEREFORE, it is the finding, decision and order of the Board that the appeal from the Order of Administrative Law Judge Steven J. Howard dated January 10, 2008, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of March 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: J. Donald Lysaught, Jr., Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

¹² See e.g., *Scott v. Total Interiors*, No. 244,761, 2000 WL 1134444 (Kan. WCAB July 28, 2000); *Burton v. Labor Ready, Inc.*, No. 225,093, 1999 WL 1008038 (Kan. WCAB Oct. 29, 1999); *Kitchen v. Luce Press Clippings, Inc.*, No. 228,213, 1998 WL 165879 (Kan. WCAB. March 17, 1998).